

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JEFFREY L. CAMPBELL

Petitioner,

v.

HAROLD CLARKE,

Respondent.

Case No. C05-5611RBL

REPORT AND  
RECOMMENDATION

**NOTED FOR:  
December 9th, 2005**

This habeas corpus action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and Local Magistrates' Rules MJR 3 and MJR 4. Petitioner filed this action under 28 U.S.C. § 2254.

INTRODUCTION AND SUMMARY CONCLUSION

Petitioner was ordered to show cause why this petition should not be dismissed as it does not appear petitioner has exhausted the issues raised in the petition. (Dkt. # 4). Petitioner did not respond to the courts' order. The court recommends this petition be **DISMISSED WITHOUT PREJUDICE** as unexhausted.

FACTS

Petitioner challenges his confinement in an out of state facility and attempts to remove an

1 action from state court because the “defendants” have not answered. (Dkt. # 1 and supporting  
2 documents). From the documents filed it appears petitioner is challenging the legality of his  
3 confinement. An order to show cause was entered as there is nothing in the record to show any issue  
4 has been exhausted. (Dkt. # 4). Indeed, the file shows the action being removed from the state  
5 superior court. (Dkt. # 1). Petitioner did not respond to the court’s order.

#### 6 DISCUSSION

##### 7 Exhaustion of State Remedies.

8 In order to satisfy the exhaustion requirement, petitioner’s claims must have been fairly  
9 presented to the state's highest court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v.  
10 Cupp, 768 F.2d 1083, 1086 (9th Cir. 1985). Petitioner does not appear to have presented any claim  
11 to the states highest court and seeks to remove this action from the superior court. Petitioner did not  
12 respond to the court order to show cause.

#### 13 CONCLUSION

14 This petition appears unexhausted and petitioner did not respond to an order to show cause.  
15 Accordingly, the petition should be **DISMISSED WITHOUT PREJUDICE**. A proposed order  
16 accompanies this report and recommendation.

17 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the  
18 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.  
19 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of  
20 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule  
21 72(b), the clerk is directed to set the matter for consideration on **December 9<sup>th</sup>, 2005**, as noted in the  
22 caption.

23  
24 Dated this 15<sup>th</sup> day of November, 2005.

25  
26 /s/ J. Kelley Arnold  
27 J. Kelley Arnold  
28 United States Magistrate Judge